

Service Date: January 23, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF THE APPLICATION OF)	
THE MONTANA POWER COMPANY FOR AU- )	UTILITY DIVISION
THORITY TO INCUR UP TO \$40,000,000 )	
PRINCIPAL AMOUNT OF LONG TERM DEBT, )	DOCKET NO. 90.1.2
TOGETHER WITH THE INTEREST THEREON, )	
IN ORDER TO PREFUND THE ESTIMATED )	DEFAULT ORDER NO. 5452
EMPLOYERS' MATCHING CONTRIBUTION )	
OBLIGATIONS UNDER THE DEFERRED )	
SAVINGS PORTION OF THE DEFERRED )	
SAVINGS AND EMPLOYEE STOCK OWNER- )	
SHIP PLANS. )	
_____ )	

BACKGROUND AND FINDINGS

1. On January 10, 1990, the Montana Power Company ("Applicant") filed with the Montana Public Service Commission its verified application for authority to incur up to \$40,000,000 principal amount of long term debt, together with the interest thereon, in order to prefund the estimated employers' matching contribution obligations under the Deferred Savings portion of the Deferred Savings and Employee Stock Ownership Plans.

2. The Application is supported by exhibits and data in accordance with the rules and regulations of the Commission governing the authorization of the issuance of securities by electric and gas utility companies operating within Montana.

3. For detailed information with respect to the general character of Applicant's business and the territories served by it,

reference is made to its annual reports on file with the Commission.

4. The Application states that Applicant is a public utility, as defined in Section 69-3-101, MCA, in that it furnishes electric and natural gas service in portions of the state of Montana.

5. The Application further states that:

- (1) The objective of this borrowing is to allow the Applicant to provide increased benefits to its employees and to reduce the cost incurred by Applicant in doing so. Utilizing the leveraging feature of the Applicant's Deferred Savings and Employee Stock Ownership Plan provides Applicant with a more effective, decreased cost means of financing its employer matching contribution obligation, and allows the use of dividends to serve the loan; in addition, Applicant can use the tax savings resulting from the deduction of these dividend payments to make any additional payments to the Trustee which may become necessary under certain circumstances (discussed below). Under the proposed financing and use of proceeds (which comply with the regulations issued under sections 409 and 4975(e)(7) of the Internal Revenue Code of 1986 defining a leveraged ESOP), Applicant believes it can provide enhanced benefits to its employees through greater opportunity to benefit from growth in share value. The plan is so structured as to maintain participating employees' benefits at the level which would occur absent the borrowing and share repurchase feature discussed herein even if there is no growth -- and, indeed, even if there is a decline -- in share value.
- (2) Applicant has had a savings plan in place for approximately twenty years in varying forms. The plans have consistently provided for the employer to match a designated portion of the amount invested by participating employees; the employer's match is in common stock of Applicant. In 1984, Applicant conformed its plan to the requirements of Section 401(k) of the Internal Revenue Code in order to enable employees to set aside their savings on a pre-tax basis.
- (3) Applicant first established its ESOP in 1978 in order to capture, and pass directly to employees, ITC benefits. When PAYSOPs replaced ESOPs, Applicant established a PAYSOP. Applicant's PAYSOP was merged into its ESOP effective January 1, 1987; this amended and restated plan was presented to the Commission as

Exhibit C to Applicant's Application in Docket No. 89.4.7.

- (4) The merged PAYSOP/ESOP Plan contained the leveraging feature being utilized in this Application. The leveraging feature was described, briefly, as allowing the Plan to borrow money to purchase MPC stock and, as the loan was repaid, allocate the stock so acquired to participating employees' accounts.
- (5) On June 27, 1989, Applicant's Board of Directors segregated from the Employee Stock Ownership Plan of The Montana Power Company and Subsidiaries that portion attributable to participation by Entech, Inc., Northwestern Resources Co. and Western Energy Company and transferred it to separate plans of such subsidiary companies; the Board then merged MPC's ESOP with its Deferred Savings Plan. It authorized the Merged Plan's trust to utilize the leveraging feature to borrow, to use the proceeds to purchase company stock, to apply employer matching and discretionary contributions to repay any acquisition loan incurred, and to apply dividends on stock held under the Merged Plan to repay any such loan.
- (6) The assets of the ESOP and the Deferred Savings Plan were to be held in the trust under the Merged Plan. A Master Trust Agreement covering Applicant's Merged Plan, and those of Entech, Western Energy Company and Northwestern Resources Co., was in order to avoid duplicative and costly administration.
- (7) On January 10, 1990, the Executive Committee of Applicant's Board of Directors authorized Applicant to incur the debt which is the subject of this Docket.
- (8) Applicant requests Commission authority to incur up to \$40,000,000 principal amount of long term debt for the purpose of lending such amount (less associated expenses) to the Merged Plan, through its Trustee. The Trustee will use the proceeds of the loan to purchase Applicant's common stock on the open market. The stock will be distributed to participating employee accounts by the Trustee toward Applicant's obligations to employees participating in this Merged Deferred Savings and Employee Stock Ownership Plan during the fifteen year term of both loans.
- (9) Applicant intends to borrow funds not to exceed \$40,000,000 in a nonpublic, privately placed arrangement with a group of institutional lenders. The debt incurred by Applicant will be retired through an amortization over a fifteen year period in equal payments, including both principal and interest.

- (10) Applicant will loan the \$40,000,000 (less associated expenses) directly to the Merged Plan Trust under a separate loan agreement. The Trustee will use the proceeds to purchase common stock of Applicant on the open market. The debt incurred by the Trust will be retired through an amortization over a fifteen year period in payments mirroring those of Applicant to its external lender(s), absent utilization of the prepayment provision.
- (11) The Trustee will pay the principal and interest on the loan to Applicant with cash received from Applicant, and will release shares to participating employees' accounts (discussed further below). The sources of the cash payments are:
  - (a) An amount equal to a fixed percent of each participating employee's qualifying income (which currently varies from 50% to 70% depending on the length of a participating employee's service with Applicant) earned during the applicable period and paid by Applicant to the Trustee in satisfaction of its matching obligation;
  - (b) Dividends on the shares of Applicant's common stock acquired by the Trust; and
  - (c) Additional payments from Applicant in the event payments of matching contributions and dividends prove insufficient to cover the levelized payment of principal and interest and any obligations to participating employees. These additional payments are discussed further below.
- (12) Mechanically, the retirement of both loans occurs nearly simultaneously through the years, absent prepayment of the loan between Applicant and the Trustee. Applicant pays that fixed percent of participating employees' qualifying income, together with dividends owed on the shares acquired by the Trust, to the Trustee. The Trustee distributes shares of common stock to participating employees' accounts equal to 1/15th of the total number of shares originally acquired by the Trustee with the \$40,000,000 loan proceeds from Applicant; the Trustee simultaneously pays Applicant cash representing its first levelized installment of principal and interest. Applicant utilizes this cash payment from the Trustee to make its payment to the external lender(s). By means of this essentially simultaneous mechanism, both the internal and external loans are retired and Applicant meets its matching obligation under the Merged Plan.

- (13) It will be necessary for Applicant to make payments in addition to dividends and its matching contribution. This situation will occur in certain years due to the levelized release of shares (1/15 of total acquired). The additional contribution is dependent upon certain variables; for example, if the share price at the time of Applicant's matching contribution was below that at which the Trustee had acquired its block of shares via the leveraging feature. Under the Merged Plan, and absent leveraging, Applicant's match would have purchased shares for the participating employee's account at a lesser cost, resulting in more total shares for the employee than could be acquired for the same matching dollars at a higher share price.
- (14) The Merged Plan specifically prohibits such a damaging result to participating employees by requiring Applicant to make an additional matching contribution sufficient to cover any such decline in value. It is this feature which meets Applicant's goal of keeping participating employees essentially indifferent as to Applicant's use of the leveraging feature; that is, participating employees are protected against any possible "downside." Participating employees can enhance their position in the reverse situation where share price at the time of the match is higher than the price at which shares were acquired by the Trustee; in such an event, Applicant's matching contribution purchases shares from the Trustee at less than the market price, resulting in more shares in the participating employee's account than would have been the case absent leveraging.
- (15) Any additional payments which may be necessary under the scenario discussed above will not be extra, out-of-pocket expense to Applicant. The source of such payments would be the tax saving experienced by Applicant as a result of favorable tax treatment of dividend payments to the Trust. The Internal Revenue Code permits Applicant to deduct, for federal income tax purposes, the cash dividends paid into the Trust on all acquired shares when such dividends are used to service an acquisition loan.
- (16) Applicant seeks Commission authority to borrow the entirety of the \$40,000,000, even though four separate Plans will benefit from the borrowing. This approach was chosen because all of the Plans are administered under the Master Trust Agreement and because Applicant's common stock is the match to participating employee contributions in all of the

Plans. Each participating employer, however, is and remains responsible for its own matching contributions to the Trust holding its portion of the total assets; therefore, an allocation of the loan responsibilities must be made. Applicant believes there will be no adverse impact on its credit or otherwise as a result of incurring a portion of the external loan to meet obligations of the nonutility subsidiaries.

- (17) The amount of borrowing which the combined Plans are capable of supporting was developed in part by a projection of the consolidated Company's matching contribution to the 401(k) Plan, escalated at 2% per year. Thus, the proportion of the beginning annual contribution attributable to each of the four participating employers is thought to produce a reasonable allocation formula for loan responsibilities. Therefore, the 1990 budget estimate for each entity's matching contribution produces the following allocation:

	1990 Budget Estimate:	% of Total
	<u>Matching Contribution</u>	<u>Matching Contribution</u>
MPC	\$ 2,101,000	81%
Entech	179,000	7%
WECO	156,000	6%
NWR	134,000	6%
	<u>\$ 2,479,000</u>	<u>100%</u>

- (18) Applicant estimates that the expenses to be incurred to complete this financing and the related transactions are:

Legal Fees	\$ 100,000
Agent Fees	300,000
Reacquisition Costs	100,000
Other	25,000
Total Expenses	<u>\$ 525,000</u>

6. Notice of the filing of the Application was given by inclusion of notice thereof on the Commission Agenda for January 15, 1990.

At a regular open session of the Montana Public Service Commission held in its offices at 2701 Prospect Avenue, Helena, Montana, on January 22, 1990, there came before the Commission for final action the matters and things in Docket No. 90.1.2, and the Commission, having fully considered the Application and all the data and records pertaining to it on file with the Commission and being fully advised in the premises, makes the following:

CONCLUSION OF LAW

That the Application complies with Section 69-3-501 through 69-3-507, MCA, inclusive, and other laws of Montana, and the same should be approved and authorized.

ORDER

IT IS HEREBY ORDERED that the application of the Applicant, The Montana Power Company, for an order authorizing it to incur up to \$40,000,000 principal amount of long term debt, together with the interest thereon, in order to refund the estimated employers' matching contribution obligations under the Deferred Savings portion of the Deferred Savings and Employee Stock Ownership Plans be granted.

1. Applicant shall file with the Commission the following data as it becomes available:

- (a) Verified copies of any agreement entered into between Applicant and lending institution(s) applicable to

the \$40,000,000 initial long term debt financings, to include term, interest rate and repayment schedule.

- (b) Verified copies of any loan agreement entered into between Applicant and the Trust, to include term, interest rate and repayment schedule.
- (c) A verified statement setting forth in reasonable detail the disposition of the proceeds of the borrowing.

IT IS FURTHER ORDERED that the foregoing authorization is without prejudice to the regulatory authority of this Commission with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter subject to its jurisdiction as provided by law.

IT IS FURTHER ORDERED that nothing in this Order or any act or deed done and performed in connection herewith shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized by this Order or authorized, issued, assumed, or guaranteed under the provisions of Section 69-3-501 through 69-3-507, MCA, inclusive.

IT IS FURTHER ORDERED that this Order shall be effective January 22, 1990.

Issuance of this Order does not mean acceptance of the Applicant's exhibits or other material accompanying the Application for any purpose other than in connection with this proceeding.



DONE IN OPEN SESSION at Helena, Montana, this 22nd day of  
January, 1990, by a 5-0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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HOWARD L. ELLIS, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

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JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.